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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,966	02/10/2006	Arnold Keller	246472009300	5675
25227 7590 03/25/2008 MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 400 MCLEAN, VA 22102				
EXAMINER				
WISTERMAYER, ALEXIS M				
ART UNIT		PAPER NUMBER		
3733				
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03/25/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/567,966

Applicant(s)

KELLER, ARNOLD

Examiner

Alexis M. Wisternmayer

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US Pat 7,011,658) in view of Nicosia et al. (US Pat 6,729,515)

Regarding Claim 1: Young teaches a device with two tubular pin holders (Figure 5 Elements A₁ and A₂) connected to a parallel guide system (Figure 5 Element 30), and can have two pins (Figure 5, two threaded elements in direct contact with V₁ and V₂).

Young does not teach a device where at least one pin holder has a locking device. Nicosia et al. discloses a latching assembly/locking device with at least one transverse groove (Figure 8, the area between Elements 105 and 50) and a hook portion/locking finger (Figure 11 Element 67) that is able to move from a locked position and a release position (Figure 14 and Figure 10, respectively). Young and Nicosia et al. are analogous art because they are concerned with a similar technical difficulty, namely a means of fastening. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the Nicosia et al. locking mechanism in the

Young bone device. The motivation would have been to offer an equivalent and alternative means of securing the tubular pin in place (see MPEP § 2144.06).

Regarding Claim 2: Young teaches a similarly claimed device as explained in Claim 1. Young does not teach a device in which the locking finger is designed like a hook that is mounted at the open end of a pin holder and is movable around an axis. Nicosia et al. discloses a latching assembly/locking device with a hook portion/locking finger (Figure 11 Element 67) mounted at the end of the threaded stud/pin holder (Figure 9 Element 89) that is movable about an axis. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Young's bone device with Nicosia et al.'s locking mechanism. The motivation would have been to offer an alternative means of fastening the pin in place (see MPEP § 2144.06).

Response to Arguments

In response to applicant's argument that Young et al. and Nicosia et al. are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the locking mechanism of Nicosia et al. relates to a similar technical difficulty.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). A locking mechanism designed for a motorcycle sissy will solve the same problem as a locking mechanism designed for a medical device.

In response to applicant's argument that Nicosia et al. does not disclose or suggest a locking device configured to restrict the movement of the pin along the pin axis by engaging a transverse groove on the pin or a tubular pin holder that restricts the lateral movement of the pin, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, Nicosia et al. disclose a locking device that is capable of restricting the movement of the pin.

In response to applicant's argument that there is no teaching of a pin having a transverse groove, Young discloses a pin with at least transverse groove (Figure 5, the threaded elements embedded in V_1 and V_2 have at least one transverse groove). The locking finger of Nicosia et al. is capable of engaging the groove of Young's pin.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexis M. Wistermayer whose telephone number is 571-270-3304. The examiner can normally be reached on Monday - Friday 8 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. M. W./

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733